IN THE HIGH COURT OF MYSORE AT BANGALORE.

Dated the 24th day of June, 1965.

Present:

The Hon'ble Mr. Justice A. Narayana Pai,

and

The Hon'ble Mr. Justice M. Santhosh.

Miscellaneous First Appeal No. 151 of 1963.

Y. Vasudeva Bhat — (Petitioner.) Appellant.

(By Shri T. Krishna Rao and Smt. Shymala Pappu).

Vs.

1. B. Bhasker Shetty.
2. Mathias Charles Fernandes.
3. F. X. D. Pinto. } Respondents.

(By Sbriyuths K. R. Karanth and K. R. D. Karanth for Respdt. 1 and Sri F. Anthony Lobo for Respdt. 3).

Miscellaneous First Appeal against Order of the Election Tribunal, South Kanara, Mangalore, in Election Petition No. 142/62 on its file dated 30th March 1963.

This Appeal coming on for final hearing on 23rd June 1965, Narayana Pai, J. delivered.

Judgment.

This is an appeal against the order of the District Judge, South Kanara, functioning as the Election Tribunal under the Representation of the People Act, 1951, dated 30th March 1963 dismissing the appellant's Election Petition No. 142 of 1962 on the file of the said Tribunal.

The election which is the subject of the said petition was an election to the Mysore Legislative Assembly from the Kaup Constituency in South Kanara District. The contestants for the single seat allotted to that constituency

were Bhaskar Shetty the 1st respondent, a candidate on behalf of the Praja Socialist Party (hereinafter referred to as the P S P.), F.X D. Pinto the 3rd respondent, a candidate on behalf of the Indian National Congress (hereinafter referred to as the Congress) and Mathias Charles Fernandes the 2nd respondent who was an independent candidate. The polling was held on 19th February 1962. The candidates secured the following number of votes:

1st respondent	13,624
2nd respondent	870
3rd respondent	13,441

Consequently the 1st respondent was declared elected in the results of the election announced on 26th February 1962.

The petitioner who is an elector in the said constituency presented the above Election Petition on 9th April 1962. There was before the Tribunal a controversy whether the appellant-petitioner was at all an elector entitled to present the petition. The issue framed in that regard was held in favour of the petitioner. It is no longer in dispute that he is an elector entitled to present the Election Petition.

There were two prayers in the petition—one to declare the election of the 1st respondent void and the second to declare the third respondent duly elected.

In support of the prayer for declaring the election of the 1st respondent void, the petitioner alleged several corrupt practices said to have been committed either by the 1st respondent himself or others with his knowledge and consent. It was alleged that (1) motor vehicles were hired on behalf of the 1st respondent for the conveyance of voters to certain polling stations; (2) the corrupt practice of bribery was committed *(a)* by treating the electors or providing them with refreshments, and *(b)* by the 1st respondent making a promise of donation of his four month's salary as a legislator, if elected, to a temple called Mulkady Durga Parameswari temple and actual donation of Rs. 55 to another temple called Manibettu Mahalingeshwara temple, and (3) the corrupt practice of undue influence was

practised on his behalf by invoking the divine displeasure of the presiding deities of the said two temples against persons who did not or would not vote in his favour It was also alleged that at one of the polling stations at a place called Uchila, the clock, according to the time shown by which the polling commenced in the morning, was advanced by 17 minutes in the evening with the result that about 50 electors could not exercise their franchise.

The 3rd respondent, the defeated congress candidate, supported the prayers made in the petition. The 2nd respondent remained *ex parte* and took no interest in the proceedings.

Many witnesses were examined on both the sides. Certain documents also were marked on behalf of the contesting parties.

The Tribunal, after examining the evidence adduced by the parties, recorded findings against the contentions raised by the petitioner and dismissed the Election Petition.

In this appeal by the defeated Election-Petitioner, his learned counsel. Mr. T. Krishna Rao, Advocate-General, has confined himself only to the following points :—

(1) That the Tribunal erred in rejecting the entire evidence relating to the alleged corrupt practice of hiring motor vehicles for conveying voters to polling stations, and

(2) That the Tribunal erred in holding that the petitioner's (appellant's) case of the 1st Respondent having promised to make a donation of four months' salary as legislator, if elected, to the Mulkady Durga Parameshwari Temple, is not proved.

Regarding other matters raised before the Tribunal and discussed in its order under appeal, it has been conceded that the evidence is not sufficiently strong to question th correctness of its findings.

The prayer for declaring the 3rd respondent as having been validly elected has been given up in this appeal.

The examination of the arguments addressed before us and the result of this appeal depend primarily, if not solely, on the reliability or acceptability of the evidence adduced by the appellant in support of his contentions. But before proceeding to examine the evidence in the case, it is convenient and necessary to set out the relevant provisions of the Representation of the People Act, 1951, because they have not only a direct bearing on the controversies before us but also because they govern, in our opinion, the approach to be made to the evidence itself.

The corrupt practice of hiring is defined in sub-section (5) of Section 123 of the Act in the following terms:—

> "The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent, for the conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under Section 25 or a place fixed under sub-section (1) of Section 29 for the poll."

There are two provisos and one explanation appeneded to this sub-section, but there are not relevant.

The relevant portion of the definition of the corrupt practice of bribery set out in sub-section (1) of the said Section 123 reads as follows.—

> " "Bribery", that is to say,—
>
> (A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing,—
>
> (a) *
>
> (b) an elector to vote or refrain from voting at an election, or as a reward to—
>
> (i) * * * *

(ii) an elector for having voted] or refrained from voting."

Section 100 of the Act sets out grounds for declaring an election to be void. The relevant portion of the said section reads as follows :—

"(1) Subject to the provisions of sub-section (2) if the Tribunal is of opinion.—

(*a*) *** ***

(*b*) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; **

(*c*) *** ***

(*d*) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(*i*) *** ***

(*ii*) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent,

*** ***

*** ***

The Tribunal shall declare the election of the returned candidate to be void."

It will be noticed from what is stated above that a corrupt practice, if proved, can in itself be made the basis for setting aside an election only if the said practice is proved to have been committed either by the returned candidate himself or by his election agent or by any other person with the consent of the returned candidate. If, however, the evidence proves only that the corrupt practice has been committed in the interests of the returned candidate by an agent other than the election agent, election cannot be set aside unless it is proved that the result of the election, in so far as it concerns the returned candidate, has been

materially affected by the corrupt practice so practised in the interests of the returned candidate.

Mr. Krishna Rao, learned counsel for the appellant, stated at the very outset that the evidence or the general effect of the evidence is insufficient to make out that the corrupt practices said to have been committed in this case were of such a character that one can say that the result of the election has been materially affected by the commission of the said corrupt practices. It is also a matter of admission that the returned candidate, the 1st respondent, had not appointed any election agent. It is therefore necessary for the appellant, before he can succeed in this appeal, to make out that the corrupt practices mentioned above had been committed either by the 1st respondent himself or by some person with his consent.

It is the contention on behalf of the appellant that at least in regard to some of the instances of hiring of motor vehicles and the alleged promise of four months' salary to the Mulkady Durga Parameshwari temple, there is evidence sufficient to satisfy an Election Tribunal that the said corrupt practices had not only been actually committed in the course of the election but also had been committed either by the 1st respondent himself or by some one with his consent. The analysis of the evidence and the formulation of propositions made in the course of the arguments in support of the appeal have therefore been directed towards making out this general claim made on behalf of the appellant.

The arguments on behalf of the appellant were opened with a criticism of what is described as a faulty approach made by the Tribunal to the evidence adduced on behalf of the appellant. It has been pointed out that even before proceeding to a detailed examination of the evidence, the Tribunal had attempted to formulate the propositions of law relevant to the consideration of the case as well as the manner of approach to the appreciation of the evidence itself. The Tribunal has observed that according to the rulings of the Supreme Court as well as of this High Court,

a trial of this nature involving an examination of the allegations of corrupt practices said to have been committed by a returned candidate at an election should not be regarded in all respects as not different from the trial of a civil suit but that it should be treated as a trial of a quasi criminal nature. It has also observed that in the light of the principles stated and settled by the rulings mentioned above, the burden of proof is undoubtedly on the petitioner-appellant who alleges the commission of corrupt practices and that the evidence placed before the Tribunal should be such as to satisfy the conscience of the Tribunal and establish the commission of corrupt practices beyond reasonable doubt. In formulating the propositions of law in that manner, we do not think, the Tribunal can be said to have committed any error. The real point of criticism is in regard to certain propositions stated by the Tribunal in the matter of appreciating the evidence or as amounting to reliable guides for an assessment of the probabilities suggested by the evidence and the credibility of the witnesses themselves. The Tribunal, for example, has observed that the parties who may be said to have been really and actually aggrieved by the result of the election were the Congress and the defeated Congress Candidate, the third respondent. The said respondent is a Roman Catholic by religion. Some of the witnesses examined on behalf of the appellant were persons who functioned as polling agents of the 3rd respondent in some of the booths or polling stations or as active Congress workers. The Tribunal has made a broad statement that because the Congress Workers may be taken to be highly interested in the Congress and against the P.S.P., their evidence is not of such value or should be looked upon with suspicion. It has also observed that because the 3rd respondent is a Roman Catholic, one might proceed on the basis that the evidence given by witnesses who are also Roman Catholics is open to suspicion. It is no doubt true that the Tribunal has observed that the more reason that a witness is a Congress man or a Roman Catholic need not in itself be regarded as a circumstance sufficient to discard the evidence of such a witness. But it is pointed out that in the course of the detailed examination

of the evidence, the Tribunal has in some cases stated no reason other than that the witness is either a Congress man, polling agent of the 3rd respondent or a Roman Catholic for discarding his evidence.

In the matter of examining the evidence relating to the alleged corrupt practice of hiring of motor vehicles, the Tribunal has observed that there are fundamental weaknesses or infirmities in that evidence, *viz.*, that no attempt has been made to prove that the persons who are said to have been transported or conveyed by the vehicles were in actual fact electors or voters in the Kaup Constituency by pointing out their names and serial numbers in the relevant portion of the electoral roll. It is also observed that according to the effect of the evidence, the persons conveyed by the vehicles were dropped at a point more than 100 yards away from the relevant polling stations and that therefore it cannot be said that the passengers were actually conveyed to polling stations. Both these observations, it is contended, cannot possibly be regarded as accurate. Some of the witnesses, it is pointed out, have actually stated that they were electors or voters in this constituency and that they had been conveyed by a certain vehicles. Their assertion that they were voters has not been challenged in their cross-examination. In such circumstances, it is pointed out, it is wrong to proceed on the footing that the assertion of the witnesses remains unproved for reason only of the fact that the entry of his name in the electoral roll has not been specifically proved. If the proposition made by the Tribunal has to be accepted, it would mean that the one and only mode of proving that a person is an elector or voter in the constituency is to produce the electoral roll of the said constituency and ask him to read out his name from it. Such proposition is not, in our opinion, accurate. The fact whether a particular person is or is not an elector has got to be proved in the same manner as any other disputed fact is required to be proved, that is to say by adducing evidence in support of it. There is no rule which says that it can be proved only by a particular type of evidence or only by the production of

documents of particular description. In the absence of any such statutory requirement, there is nothing to support the learned Judge's proposition that the electoral roll should necessarily be produced and that in the absence of its production, it is not possible to hold that the persons who depose that they are electors transported in some taxi or other referred to in the evidence are voters or electors. Though the language employed by the learned Judge lends support to the view that such was the proposition that he wanted to make out, we should state in fairness to him that no such proposition in absolute terms can be read into his observations. Actually it appears to us that the Tribunal was influenced by other circumstances and other infirmities in the evidence in coming to that conclusion. However, if it should at all be possible to say that a proposition in such absolute terms can be read into the order of the Tribunal, it should be stated that such a proposition is not correct in law.

If it is possible to accept the evidence that voters were conveyed by vehicles hired by the returned candidate or by some agent of his with his consent, we do not think that the mere fact that they were dropped at a point more than 100 yards from the polling stations has or can have any effect on the legal value of the evidence. The essence of the corrupt practice as defined in sub-section (5) of Section 123 already extracted by us above is that the hiring must have been for the conveyance of an elector to or from any polling station. If the evidence can be regarded as sufficient to establish the fact that the clear purpose of hiring was the conveyance of voters to or from a polling station, the corrupt practice must be held to have been proved, whatever be the point at which the voters were dropped for the purpose of going to a polling station to vote. The Tribunal had apparently in mind Section 130 of the Act which prohibits canvassing or soliciting for votes on the date or dates on which a poll is taken at any polling station or in any public or private place within a distance of 100 yards of the polling station.

It has also been argued that the manner in which the Tribunal has proceeded to deal with the evidence of one witness after another and stated some reason or other for

not accepting their evidence has prevented the Tribunal from having regard for what are described as broad probabilities in the case. That is a matter on which more views than one are possible. But it appears to us that if, as held by the Supreme Court and this Court, the burden of proof in cases of this nature is undoubtedly on the petitioner and the evidence he adduces should be sufficient to establish the corrupt practice alleged by him beyond reasonable doubt, the theory of broad probabilities may turn out to be a snare rather than a reliable guide for the examination of the evidence. It is no doubt true that in the last analysis, the only guide, which the Court can have in assessing whether or not the evidence of the witnesses can be believed, is the consideration of probabilities. It should be pointed out that probabilities depend not merely on external circumstances, objective facts or situations but also upon the reaction of parties and witnesses to such circumstances and situations. While examining the probabilities from that point of view, it is not possible wholly to keep out of mind the reactions or sympathies of an individual witness whose evidence is being examined. In that view, the fact that the Tribunal has attached some importance to the fact that particular witnesses were either congressmen or polling agents of the third respondent or Roman Catholics can hardly be condemned as wholly inaccurate or inappropriate for the examination of the evidence.

However, any further discussion of these criticisms is unnecessary because, as an appellate Court entitled and bound to go into questions of fact and law, we now proceed to make an independent examination of the evidence in the light of the arguments addressed before us.

We will first take up for consideration the alleged corrupt practice of hiring motor vehicles for the conveyance of voters to and from polling stations.

The details or particulars of the appellant's case in this regard are set out in paragraph 8 of the Election Petition. The said paragraph enumerates five motor vehicles said to have been hired for the purpose above mentioned. They are

three taxis or motor vehicles available for hire bearing Registration Nos. MYV 1634, MYV 2803 MYV 2841, said to have been taken to the constituency from Mangalore and a taxi bearing Registration No. MYV 2901 from Udipi and a private motor car bearing Registration No. MYA 8577 said to belong to one Benedict D'sa and hired for the purpose. The general allegation in regard to all these is that they had been engaged on behalf of the 1st respondent and with his consent, knowledge and connivance to convey voters to and from certain specified polling stations and had been actually used for the said purpose on the polling day, *viz.* 19th February 1962.

The appellant appears to have filed subsequently an affidavit intended apparently to furnish further particulars in this behalf. The affidavit, however, does not add much or anything at all to the information already furnished in paragraph 8 of the Election Petition.

One of the preliminary arguments or contentions raised by Mr. Karanth, learned counsel on behalf of the 1st respondent is that the particulars furnished by the appellant in regard to or in relation to this corrupt practice were defective or inadequste. He also relied upon a ruling of the Allahabed High Court reported in DIN DAYAL v. BENI PRASAD 15 Election Law Reports 131 The argument based on this decision is that on the basis of the case stated by the appellant, the hiring had been done not by the 1st respondent but by some one or more persons on his behalf. According to clause (b) of Section 83 of the Act, it is obligatory on the part of an election petitioner to furnish full particulars of the corrupt practice alleged by him, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of such corrupt practice. If the hiring of motor vehicles was not by the 1st respondent but by some one else on his behalf, it is argued, the petitioner-appellant should have given the names of those parties in the petition or at any rate in the affidavit subsequently filed by him. The contention appears to us to be well-founded. But it is not sufficient at the present stage

to dismiss the petition *in limine*. As pointed out by their Lordships of the Supreme Court in BALWAN SINGH-v-LAKSHMI NARAIN A.I.R. 1960 S.C. 770, if the parties go to trial despite the absence of full particulars of the corrupt practice alleged, and the evidence of the contesting parties is led on the plea raised by the petitioner, the petition cannot thereafter be dismissed in *limine* but the appellate Court will be justified in setting aside a judgment of the Tribunal in favour of the petitioner if it is satisfied that by reason of the absence of full particulars, material prejudice has resulted to the unsuccessful respondent. In this case, though the particulars may, for the reasons stated above, be regarded as insufficient or the statement of particulars is not fully in compliance with the requirement of Section 83 (b) of the Act, the parties have gone to trial, issues specifically raised and formulated in regard to every one of the contentions and considerable evidence has been led. The legal contention therefore does not avoid the necessity of a full examination of the evidence by us once again at this appellate stage.

According to the case as sought to be made out in the evidence, the position was somewhat as follows: Four taxis are said to have been engaged on behalf of the 1st respondent at Mangalore and 100 litres of petrol were purchased at Mangalore for being used for those taxis. Similarly one taxi is said to have been engaged at Udipi and 30 litres of petrol were purchased therefor. Apart from these, a private car belonging to one Benedict D'Sa was engaged, there being no indication of the place wherefrom petrol for the said vehicle had been purchased or of the manner in which it was supplied with petrol.

Although it is the consistent case of the petitioner that four taxis had been engaged from Mangalore, the evidence relates to or seeks to make out the engagement of only three taxis bearing Registration Nos. 1634 2803 and 2841. That 100 litres of petrol had been purchased by or on behalf of the 1st respondent is sought to be made out on the basis of his own return of election expenses. The main paper relating to those expenses is marked Ex. B-13, and the

vouchers for the purchase of petrol by the 1st respondent produced with Ex. B-13 are separately marked Ex. B-14 series. Among them, there is a bill bearing Serial No. 50434 of a concern called M S Pai and Company, a Caltex dealer at Mangalore; it is in respect of the supply in bulk of 100 litres of petrol. Though it does not contain the name of the purchaser, the fact that the person interested in the purchase ultimately was the 1st respondent is clear from the fact that he has produced this bill as one of the vouchers attached to his return of election expenses. When after the close of evidence for the petitioner-appellant the 1st respondent had been in the box and examined in part, the 3rd respondent, who till then had not taken any steps to examine any witness, appears to have sought the permission of the Court to examine two witnesses. The 1st respondent's examination was stopped and postponed till after the completion of the Examination of the witnesses on behalf of the third respondent. The two witnesses examined by the 3rd respondent were Gopala Krishna Mallya and Vasudeva, R. Ws. 2 and 3 respectively. Of these, the material evidence is only that of Vasudeva R. W. 3 who claims to have been the person who made the actual sale of 100 litres of petrol under the aforesaid bill. According to him, the sale was made somewhere between 10-30 and 11 P.M. on 18th February 1962 when he was on night shift or night duty at the petrol bunk in question. The voucher is, however, dated 19th February 1962. The explanation of the witness is that the night shift person generally puts the next day's date. His further evidence is—

> "The petrol was filled up to 4 taxis which had come together to the bunk. The 4 taxis belong to Mangalore. I remember the number of one of the taxis. It is MYV. 1634. The driver was asking the petrol to be filled up quickly".

P.W. 2 Valerine D'Sa is the owner and driver of Taxi No. 1634. His evidence is that he left Mangalore with his taxi at about 10-30 P. M. on 18th February 1962 and reached Kaup at 1-30 A.M. the same night. Ex. A-2 is the

Trip Sheet produced by him. Ex. A-2 (a) is the relevant page therein. If the entries therein are to be believed, this taxi did two town trips in the first instance, then left Mangalore for Kaup at 11 O'Clock and reached the latter place at 1-0 A.M. But the first entry relating to what is described as a town trip apparently commencing from Hampanakatta kept him engaged till 12 P.M. and covered distance o 20 miles. P.W. 2 who in his chief examination had stated.—

> "I had been taken there in connection with the election by the P.S P. Party. I was paid hire and petrol. I was paid Rs. 10 that day and the petrol was supplied by them",

gave further particulars or details in the course of his cross-examination including the fact that one Shenoi had engaged his taxi. Who that Shenoi was we have no other evidence although P.W. 2 asserted in the witness box that he could identify Shenoi if he was shown to him.

P.W. 9 Manjunath is the driver of MYV 2803 who is said to have driven the taxi from Mangalore to Kaup. According to his evidence, he also left for Kaup that night. He does not give the exact time. But Ex. A-8, a book produced as a Trip Sheet pertaining to the said taxi No. 2-04, shown that the taxi left Mangalore at 11-45 P.M. for Kaup and reached Kaup at 12-40. P.W. 9 does not give the name of the person who engaged his taxi. All that he says in his deposition in chief is—

> "A person talking Konkani got taxi"

In his cross examination he states—

> "The person who engaged the taxi came in the taxi to Kaup"

P.W. 2 Valerine D'Sa is specific in his cross-examination that Taxi No. 2803 also was taken that night by Shenoi who had engaged his own Taxi 1634 and that the said Shenoi travelled with him in his taxi No. 1634 to Kaup.

.W. 5 Basappa is the driver of MYV 2841. He states—

> " On the night of 18th February 1962 the car was hired. I took the car There was one person in the car. I was paid hire of Rs. 50 by one Achar, a member of the P.S.P. Party"

In his cross-exa nation he stated that he started from Mangal re at 5 A.M. on 19th February 1962. Ex. A-6, the Trip Sheet, pertaining to this taxi also contains an entry that the taxi left Mangalore at 5 A M and reached Katpadi at 6-30 A.M. As in the case of Shenoi, so in the case of Achar we have no evidence who that gentleman was. None of the drivers of these three taxis states where or at which Petrol Bunk his taxi was supplied with petrol. Only in the case of P.W. 5, it was elicited in the course of cross-examination that petrol was supplied in Mangalore.

From what is stated above relating to the circumstances in which these taxis came to be engaged, it is not possible to say definitely who engaged these taxis or whether the engagement was by the same person or a group of persons acting in concert. The evidence of P.W. 2, if believed, would show that one person called Shenoi engaged both his taxi as well as Taxi No. 2803 If so, one would expect both the taxis to leave Mangalore together. That is not the position either according to their oral evidence or according to the entries contained in the Trip Sheets produced in the case. What is more, if the evidence of Manjunath P.W. 9 is true, the gentleman who engaged his taxi travelled with him. If this is true, he could not have travelled in Taxi No. 1634. If P.W. 2's statement that the same Shenoi engaged both the taxis and that the said Shenoi travelled in 16 4 is to be believed, he could not have travelled in Taxi No. 2803.

The position suggested by the evidence of Vasudeva R. W. 3 is that four taxis came simultaneously to the bunk at which he was working between 10-30 and 11 P.M. and that he supplied 100 litres of petrol for the use of the said taxis. Although he is specific and clear in his statement

that he did remember the number of one of the taxis and gave it out as 1634, his cross-examination shows that he does not generally note the number of every taxi or motor car to which petrol is supplied nor does he give any special reason why he came to note the number 1634. It was the case of the appellant that four taxis had been engaged and supplied with petrol at Mangalore from the very commencement If so, one might ask why no specific questions were put to any one of these drivers and the information elicited from them as to the exact place or the petrol bunk at which they were supplied with petrol. We have considerable hesitation in placing reliance upon or acting upon the evidence of R W. 3. One of the reasons for that hesitation is that he was examined by the 3rd respondent who until the 1st respondent had been examined in part had not taken any steps to cite any witness on his behalf but brought them in the middle of the examination of the 1st respondent which had to be postponed to complete the examination of the two witnesses whom the third respondent wanted to examine. The 3rd respondent had at all times supported the case of the appellant. Whether the appellant was or was not a namelender for the third respondent as to which it is unnecessary to express any opinion because it has no relevance whatever for the examination of the evidence, it is too much to believe that the information about the existence of the evidence which R.W. 3 subsequently placed before Court, if available to the 3rd respondent, could not have been passed on to the appellant. If it is remembered that it is the part of the app llant's case that four taxis engaged in Mangalore were supplied with petrol in Mangalore, we think it was clearly the duty of the appellant to have examined Vasudeva much earlier and not left it to the 3rd respondent to do so after the 1st respondent had been examined in part. The need for the 3rd respondent to bring up this witness was obviously occasioned by the fact that the appellant had closed his case and the 1st respondent had started giving evidence.

In the light of the foregoing, the first part of the case relating to the hiring of these taxis cannot be said to have been satisfactorily made out.

We may next take up the evidence relating to the circumstances in which Taxi No. 2901 was engaged at Udipi. P.W. 3 Joseph Salins is the owner of this taxi. P.W 4 Lawrence D'Souza is the driver who is said to have driven the taxi on 19th February 1962. According to the evidence of Joseph Salins, his taxi had been hired about 2 or 3 days before the election by the 1st respondent himself with the further information that he wanted the same for 'election use' But the evidence of his driver Lawrence D'Souza P.W 4 gives the impression that the bargain was for the first time settled between him and the hirer on the night of 18th February 1962 at the bus stand in Udipi. Although in his chief examination he had stated nothing about the circumstances in which the taxi had been hired, he stated as follows in cross-examination :—

> "On 18th February 1962 Kamath came at about 8-30 P M. to Udipi Bus stand. The taxi was in the Bus stand. The taxi had gone for hire on 18th February 1962. There were other taxis in the bus stand. I was waiting then for hire. I did not ask for mileage. I told him that he should pay Rs. 50 and he should give petrol. He did not discuss about it but agreed. The petrol was filled near the bus stand. Kamath and Shetti left after supplying petrol."

Kamath and Shetti mentioned by this witness have been examined on behalf of the 1st respondent as R.Ws. 23 and 19 respectively.

There is clear evidence about the supply of petrol to this taxi on the night of 1 th February 1962 P.W.11 Prabhakara Rain Karnadakar is a partner of the firm which was running the petrol bunk at which this taxi was supplied with petrol. He has produced the relative bill which is a Delivery Memo bearing No. 6927 dated 18th February 1962 which was marked Ex A-11. He has also produced one of his books of account marked Ex. A-12. Both these documents clearly make out that on 18th February 1962 M. V. Kamath was supplied with 30 litres of petrol for MYV 2901. We shall refer to the evidence of Seetharama Shetti at a

later stage. It is, however, necessary to refer to the evidence of Kamath R.W.23 at this stage itself.

R W. 23 admitted having engaged the taxi and purchased 30 litres of petrol for it from P. W. 11. But he stated that during the election he had worked for the Congress and not for the P.S.P. Certain witnesses for the appellant including one Dr. Kuppannachar examined as P.W.24 had already named this Kamath as one of the persons who had worked for the 1st respondent or the P. S. P. party. Kamath, according to what he states in his cross-examination, came to the box to clear himself and contradict Kuppannachar. Whether Kuppannachar is stating the truth or Kamath, one thing is clear that there is no evidence on which the appellant could ask the Court to hold in his favour without hesitation that Kamath who had engaged this taxi was clearly one of the P.S.P. workers or the agent of the 1st respondent.

In regard to Taxi No MYV 2001 also therefore there is no satisfactory evidence to show that the actual hiring had been done by any one on behalf of the 1st respondent.

Regarding MYA 8577, we have the evidence of one Benedict D'Sa examined as P.W.10 on behalf of the petitioner appellant, and one Raghava Shetty the brother-in-law of the 1st respondent examined on his behalf as R. W. 32. Benedict D'Sa P.W. 10, says that the car had at the relevant time belonged to him, that Raghava Shetty mentioned above had hired it from him for use during four days from 16th to 20th February 1962 and that the said Raghava Shetty had told him that the car was required for the election work of the P.S.P. party. Raghava Shetty, on the other hand, categorically denied every one of the statements made by Benedict D'Sa. He stated—

> "I know Benedict D'Sa. He resides in Mudebelle. He does not own any motor car. I did not send for car No. MYA-8587 for using in the elections. I had not paid any money."

There is no question—not even a suggestion—in the cross-examination of Raghava Shetty intended either to discredit

or to any extent minimise the value of his categorical statements made in his chief examination. On the contrary answers have been elicited in the course of cross-examination of P.W. 10 tending to cost doubts on his claim of ownership of the Car. He admitted that the registration of the car was in the name of one Raphel Fernandez, that after he (the witness) had sold the car 4 months before he gave evidence (he was examined on 2nd November 1962) the registration was changed to the name of the purchaser He opened his chief examination by saying that he had the car with him "for 4 months from December 1961 to May 1962" In his cross-examination he stated that the sale was about four months before he gave evidence. The period and the dates do not make out any consistent picture, But his admission that the car had never been registered in his name does support the argument that what Raghava Shetty stated is perhaps nearer the truth In any event, the only case of appellant placed before Court through P.W. 10 being that the hirer was Raghava Shetty, his denial thereof on oath unchallenged by any question or suggestion in the course of cross examination makes it difficult to accept the appellant's case.

We may next examine the question from the point of view of the manner in which the cars are said to have been used according to the evidence adduced by the petitioner and consider whether the said evidence has established any circumstances on the basis of which some reasonably firm inference could be drawn in favour of some one having engaged any one of these vehicles with the consent of the 1st respondent.

The use of these cars on which the appellant relies to make out his case of corrupt practice was admittedly only on the polling day. viz., 19th February 1962. According to his case, MYV 1634 was used for the conveyance of voters to polling stations at two places Padubidri and Uchil, MYV 2901 was used for the said purpose at Shirva, MYV-2803 at Katpadi, Shankarapura and Innanji, MYV.2841 at Kurkal and MYA 8577 at Kaup.

On this point we may straightaway eliminate MYV 2803 because of the evidence given by its owner Seetharam-Padakannayya as P.W.8 and its driver Manjunath as P.W.9. The owner stated—

> "On 19th February 1962, my taxi was plying in Kapu. It went to Kapu on 18th February 1962. Manjunath was driving the taxi at that time. I got Rs 59—as taxi hire. The party who took it paid the amount. The driver told me that he had taken the taxi for election work to Kapu on behalf of P.S.P."

Hence he does not know anything personally and he is unable to depose to any facts usefull for the appellant's case on his own knowledge. The driver Manjunath (P.W.9) in his chief examination stated—

> "I do not know for which party the taxi was hired. I was paid hire. I paid that amount to P.W.8."

In this view, even if some value can be attached to the evidence of P. Ws. 27, 32 to 36, 51 and 65 to 67 who are said to be voters who travelled in this taxi, nothing much can be said to have been made out on behalf of the appellant. We might state that the evidence of these witnesses is too general to be capable of yielding any inference one way or other—certainly no inference in favour of the petitioner-appellant's positive case that some one on behalf of the 1st respondent had utilised this taxi for the conveyance of voters to the polling stations and that the said person had done so with the consent of the 1st respondent.

The evidence in relation to vehicle No. MYV 2901, though considerable in bulk and strongly relied upon on behalf of the appellant, is no evidence which can either be relied upon or acted upon by any Court of law.

P. W. 24 Dr. Kuppannachar, P. W. 25 Chandrahasa Hegde and P. W. 37 Mendonsa are three important witnesses on this part of the case. Kuppannachar is the Vice President of the Udipi Taluk Development Board and Congress-man. Chandrahasa Hegde belongs to Shirva and had gone to cast his vote in this election to the polling

booth in Shirva about 9–30 in the morning. Mendonsa is the Head Master of St. Mary's High School at Shirva and acted as the polling agent in this election of the Congress Candidate U.S. Mallya for the Parliamentary seat.

The evidence of Kuppannachar in regard to taxi No. 2901 in his chief examination is—

> "On the Election day I went to Shirva in the afternoon. I had seen the voters being taken in vehicles . Taxi 2901 was carrying voters to Shirva polling station. I saw the taxi making 6 or 7 trips. Taxis were driven on behalf of P.S.P."

In his cross-examination the following answers Were elicited from him :—

> "No. 2901 is a taxi. It is a Land Master Car. Its capacity is 5. I did not complain to police. I cannot say who were all in the Congress office. There was Seetharama Setty in the taxi with a badge, or 2 or 3 trips. He was noting the passengers get out of the taxi. I came to Shirva at 2 P.M. and remained till the voting was over. I cannot say if I saw Seetharama Setty again."

Chandrahasa Hegde P.W. 25 had been to vote at about 9–30 in the morning. He says that he was there between 9 and 11–30 A.M. when he saw Taxi No. 2901 running and carrying passengers. In his cross examinaton he stated—

> "I was standing by the road from 9 to 10–30 A.M. I went to vote at 9–30 P.M. I came out in 10 minutes. I was watching afterwards. There was no other car till afternoon. Another car came at 2–30 P.M. I was still on the road side then. I remained till 4–30 P.M. I was not there from 11–30 A.M. till 2–30 P.M. The car that came in the afternoon is No. 2421. It is private car. R. 3 came in that car. Taxi No. 2901 was not there in the afternoon. I saw Kuppannachar in the Congress office under the tree. He came there at about 10–30 A.M. walking. He

went to the school and went away. I did not see him again, coming out of the school."

If, as stated by Kuppannachar, he went to Shirva only in the afternoon and was not there till 2 P.M. and if as Chandrahasa Hegde stated, taxi 2901 was not there in the afternoon, it is difficult to see how Kuppannachar could have seen the taxi whereas Kuppannachar was definite that he was at Shirva only at 2 P.M Chandrhasa Hegde stated that he saw Kuppannachar at 10-30 in the morning.

The versions given by these two witnesses are wholly irreconcilable.

P. W. 37 Mendonsa identifies the car, not by its number but by the fact that it was being driven by Lawrence D'Souza meaning apparently P. W. 4. In his chief examination, he stated that he saw the said taxi both at 11-30 A.M. as well as at 2-33 P.M. Apparently the attempt is to salvage the case of the appellant from the effect of the conflicting versions given by Kuppannachar and Chandrahasa Hegde referred to above. P. W. 37 also stated in his cross examnation—

"One Seetharama Setty, P.S.P. worker, was in that taxi once in the 11-30 A.M. trip"

He also gave the further information in cross examination in the following terms :—

"M. Vasudeva Kamath had hired the taxi. He had worked for P.S.P."

Now, Seetharama Setty has been examined as R. W. 19 by the 1st respondent. He denied having worked for the P. S. P. but admitted that having been nominated as polling agent by a brother of the 1st respondent on behalf of the 1st respondent, he acted as the polling agant at Padubelle and that he was in the said polling station from 8 A.M. to 1 P.M. and 2 P.M. to 5 P.M. In his chief examination he made a general denial to the effect—

"It is false that voters are taken in taxi for voting by P. S. P."

No questions were put to this witness in his cross-examination to contradict either of his statements that he had not worked for the P. S. P. and that no taxi had been engaged for the conveyance of voters by the P. S. P. Whether he was or was not a sympathiser of the P. S. P., or had or had not worked for the P.S.P. the fact that he did act as the polling agent at Padubella must, we think, be taken as established because no attempt has been made to dislodge that fact by cross-examination the failure to do which assumes considerable significance because of the fact that the appointment of polling agents has to be made in writing under the rules and if Seetharama Setty had uttered a falsehood, it was capable of being exposed.

If, therefore, Seetharama Setty was at the polling booth at Padubella from 8 A.M. to 1 P.M. and from 2 P.M. to 5 P.M. neither Kuppannachar nor Mendonsa could have seen him travelling in taxi No. 2901. Kuppannachar has given further details and described Seetharama Setty as actully checking the number of passengers getting out of the taxi. For the reasons already stated both the witnesses Kuppannachar and Mendonsa must be taken to have permitted themselves to state before Court facts which are proved to be inaccurate by the evidence adduced on behalf of the 1st respondent which, though capable of being challenged, had not been challenged by the appellant. What is more, Mendonsa P.W. 37 who there is nothing to show was at the Udipi Bus stand on the night of 18th February 1962, has stated before Court as if on personal knowledge that Vasudeva Kamath had engaged the taxi. If he had stated that he learnt that fact from somebody else, it would have been something. But as the evidence reads, it would appear that he was speaking on personal knowledge. That attitude or the preparedness to speak to facts not within his personal knowledge as if they were within his personal knowledge is a circumstances which casts serious suspicion on the acceptability of the rest of his evidence.

According to the driver Lawrence it was Seetharama Setty who was present at the hiring at the bus stand of

Udipi on the night of 18th February 1962 and it was Seetharama Setty who paid him the hire on 19th February 1962. If that were true, one might ask why these facts were not specifically put to Seetharama Setty when he was in the box. Whether the omission was deliberate or by oversight, the Court is deprived of the necessary material which would have persuaded it to place some value on the evidence adduced on behalf of the appellant.

When the evidence of three of the important witnesses examined by the appellant in regard to facts relating to taxi No. 2901 is open to such criticism and therefore not evidence which a Court could act upon, the rest of the evidence relating thereto necessarily loses much of its weight. The other evidence is of voters who are said to have travelled in this taxi. They are P. Ws 26 Balthazar Martis, 52 Jogi Poojari, 53 Navu Poojari, 54 Menka Poojari and 55 Nadela Poojari. These witnesses do not identify the taxi by its number. P. W. 26 however mentions that it was being driven by P. W. 9 which may be sufficient to identify it. The other witnesses (four Poojaris) do not even refer to the driver.

We do not think therefore that the evidence relating to taxi No. MYV 2901 is any better in its effect than the evidence relating to Taxi No. MYV 2803.

The evidence relating to MYV 2811 is of a general character without any specification of definite details which might connect the taxi with either the first respondent or even the P.S.P. P.Ws. 56, 57, 58, 60, 61 and 62 are said to be voters who travelled in this taxi. They do not however give either the number of the taxi or state any thing more definite than that some persons named by them and described as P.S.P. workers took them in a taxi or made a taxi available to them. This evidence is too general to connect the first respondent with the user of this taxi or to bring the petitioner's case within Section 100 (1) (b) of the Act.

The two vehicles with reference to which an attempt is made to connect the respondent with the actual user or such user thereof as to imply his consent are MYA 8577 and MYV 1634.

Regarding the vehicle MYA 8577. we have already made ur observatu ns and stated our reasons why it is not possible to hold that its hiring had been made by Raghava Setty or that the said hiring was on behalf of the first respondent. But there are to pieces of evideuce on the basis of which some attempt has been made on behalf of the petitioner to trace the responsibility to the first respondent One of them is the fact that among the vouchers produced by him included in Exhibit B-14 series, there is a voucher bearing No .653 for supply of petrol to a vehicle bearing No. 8577. There is then the evidence of two witnesses, P.Ws. 30 and 31 to the effect that they travelled in this car to the polling station and that at a meeting of voters including themselves held on the previous day, that is 18th February 1962, the first respondent was personally present and had promised that a car would be arranged for the use of the voters of that locality (the locality is fisheries road in Kaup).

Regarding the voucher included in Exhibit B.14, the argument on behalf of the first respondent is that though it contains the number 8577, there is no mention of the letters MYA in the registration number of the vehicle. That may or may not be a clinching circumstance. But what is of importance from the point of view of the first respondent's case is that it bears the date 4th February 1962, whereas according to the evidence of P.W. 10 Benedict D'Sa, the alleged owner of the car he himself drove it to Kaup and delivered it at Kaup to Raghavaiah Setty on the 16th of February 1962.

The evidence of P.Ws. 30 and 31 to the effect that the first respondent himself had promised to make a car available to them and had come to Kaup on 18th February 1962 might have been of considerable value to the case of the petitioner but for the fact that there is other more trustworthy evidence tending to show that on the said date, 18th February 1962, the first respondent was not in Kaup but in another place called Kurkal.

The oral evidence in this regard is not only that of the first respondent himself as R.W. 1, but also of two other

persons R.W. 12 J. Ranga Pujary and R.W. 21 K. N. Narasimha Achar. According to the evidence of the first respondent, he went to Kurkal on the 18th and returned that night only at 10 P M R.W 12 Ranga Pujary is one of the persons who had worked with the first respondent for his election. He also says that he had gone with the first respondent to Kurkal on the 18th February 1962. Except that it was elicited from him in his cross-examination that he had not maintained any diary, there is nothing very serious in his cross-examination.

R.W.21 Narasimha Achar is the Vice-Chairman of Kurkal Panchayat. He states that on the day previous to the election (that is to say, on 18th February 1962) the first respondent had come to his village at about 1 p.m for canvassing in the company of Deju Setty, Ranga Pujary and others. The said Pangapujary is apparently, R.W. 12 In the case of R.W. 21 also there is no serious cross-examination

Apart from the absence of serious cross-examination, the evidence of these three witnesses, R.Ws. 1, 12 and 21 to the effect that the first respondent was at Kurkal on the 18th February 1962, finds corroboration from an entry in his return of election expenses, Exhibit B-13. For the purpose of the case in relation to Mulkady Durga Parameswari Temple, the petitioner himself had elicited from the first respondent the following answer in relation to Exhibit B-13 :—

> "I have given the places visited correctly in Exhibit B-13"

The entry in Exhibit B-13 dated 18th February 1962 shows that on that date he had incurred an expenditure of Rs.17.00 on account of himself, Ranga, K. Deju Setty, Honnish Setty, Ramasetty and Muddubandari having gone to Kurkal.

This evidence is sufficient to destroy the value of the evidence of P.Ws. 30 and 31 which is the only material part of the evidence relating to MYA 8577 in support of the petitioner's case. The evidence of the three other

witnesses, P. Ws. 28, 29 and 46 being of a general character is not of value as lending direct support to the specific case at issue. We might however add that further support to the first respondent's case was sought from the evidence of R. W. 9 Poovappa Pandit, Vice-Chairman of Kaup Village Panchayat, who states that at the relevant period the Fisheries road was not in a motorable condition beeause there was an unbridged stream making it impossible for cars to pass that way.

The evidence in relation to MYA 8577, therefore, also does not advance the petitioner's case.

The importance of the evidence relating to the only remaining vehicle MYV 1634 is that either the first respondent himself had travelled in the vehicle and had actually permitted or witnessed, without attempting to prohibit, some of his own volunteers conveying the voters in the said vehicle at two places, Padubidri and Uchila.

That the first respondent travelled in that vehicle is spoken to by the driver of the vehicle Valarine D'Sa, P W. 2. Several witnesses who are residents of Padubidri and were at or near one of the polling booths at Padubidri also speak to the first respondent coming to Padubidri in the said vehicle and getting down near the polling station and also to the effect that the taxi was utilised by P. S. P. volunteers for conveying voters to the polling station. Among those witnesses, the important witnesses are P. W. 39 P. Mahabala Shetty, P. W. 40 K. Mahabala Shetty, P. W. 41 Ramachandra Rao, P. W. 42 Devidas Shenoy and P. W. 49 Anantha Shenoy. The evidence generally relates to a polling station located in the building of Hindustani Elementary School. Some of these witnesses have either a shop, or hotel nearby or were there for the reason that they were acting as polling agents. P. W. 39 P. Mahabala Shetty, who is also the Chairman of the local Village Panchayat, is running a hotel in the locality. P. W 41 Ramachandra Rao was sitting in a hotel run by his son-in-law. P. W. 42 Devidas Shenoy and P. W. 49 Anantha Shenoy were both polling agents on behalf of the congress

candidate. The number of the taxi, MYV 1634 is made mention of only by these two witnesses, namely, Devidas Shenoy and Anantha Shenoy.

The general effect of the evidence of these witnesses is that at about 2 O' clock or 2. 30 in the afternoon, the first respondent came in the said taxi and got down at what is called in the evidence P. S. P. Chappara (that is to say, pendal temporarily put up for the use of P. S. P. workers) near the polling station. He spent some time in the chappara and some time near the polling station itself. When he got down some of the P. S. P. volunteers—who are identified as such volunteers by the witnesses from the fact that they were wearing distinctive badges which displayed the election symbol of the P. S. P., a hut,—either approached him or made use of the fact that he was not then utilising the car, for taking out the car to fetch voters. Almost every one of them states that the car made three or four trips and brought to the polling station, on each trip, 5 voters. The witnesses are also fairly unanimous in stating that the voters so brought in the taxi were Muslims.

According to P. W. 39 P. Mahabala Shetty, he saw the first respondent arrived at about 2 or 2. 30 p. m. and the first respondent remained there till about 4 P.M. P. W. 40 K. Mahabala Shetty also states that he saw the first respondent at about 2.30 P. M. He does not state the exact time when he left, but gave his estimate of the first respondent's stay at the place, in his cross-examination, to be one quarter or half an hour, and that for each trip, the car took about 10 minutes. According to P. W. 41 Ramachandra Rao, the first respondent arrived at 2.30 P. M. and left at 4 P.M. That is also the evidence of P.W. 42 Devidas Shenoy. P.W. 49 Anantha Shenoy does not give the exact time of the arrival and departure of the first respondent. He, the witness, took food and came from the Bazar side at 2-15 and stayed near the Congress Chappara for about three-quarters of an hour. He returned to his duties as polling agent at about 3 P.M. He must have seen, therefore, the first respondent during this period.

The evidence of P.W. 43 Parameshwara Shetty, who is a tailor in Padubidri, does not add much to the evidence of the rest of the witnesses. He saw the first respondent arrive at P.S.P. Chappara at about 2-30 P.M. and saw a taxi making three trips, carrying 4 or 5 voters each time. Another piece of information which was elicited from him in cross-examination was that there was one Khader Sahib working for P.S.P.

P.W. 44 Usman Sab and P W. 45 Sabu Sab are two voters who say that they were conveyed to the polling station by the aforesaid Khader Sahib. The former, Usman, was loading fish into a lorry when the car came to fetch him and the latter, Sabu Sab, was digging pits when the car came to fetch him. The former was fetched at 3 P.M. and the latter, at about 3-30 P.M.

P.W. 48 Ramesha Achary and P.W. 50 Gangadhara Achary are witnesses, whose old mothers were transported by car to cast their votes. The latter definitely states that his mother went in the car to vote. The record of the evidence of the former is equivocal. It reads :—

> "I know R-1. He was in the pendal. 2 or 3 volunteers asked R-1 for the car to get voters. He asked them to take the car. I know one Khadri who was one of the volunteers. I took my mother to the polling booth."

It may be, as suggested on behalf of the respondent, this witness' mother had apparently been taken by himself earlier and he was outside pendal and watched the car going. But the suggestion on behalf of the appellant that the effect of the evidence of this witness in that his mother also was taken in a car, cannot be wholly discounted especially in view of the specific evidence of the driver, Valarine D'sa to the effect that he made 4 trips in Padubidri for fetching voters.

Regarding the use of this taxi at Uchila polling station, there are three or four witnesses. Of them, P. W. 38, Chandrasekhara Hegde was the polling agent of the third

respondent at Uchila. He speaks to the first respondent coming to Uchila by MYV 1634 at 1-30 p.m. and the taxi being used thereafter for fetching voters. P. W. 47 Laxman is a voter in the neighbouring village of Yellur. He states that he passed through Uchila on his way back and saw the first respondent at 1 p. m at Uchila. He speaks to the taxi going about fetching voters. P. W. 63 Narayana Salian states that he did not travel in the car and that his father Shambu Markala aged 77, one Sithu Hengsu aged 65 and Gopal Suvarna, aged 80, were conveyed in the car to cast their votes. P. W. 64 Rama P. Bengera speaks to his seeing voters being transported by taxi. Both of them refer to one Vittal Kundur acting as a P S. P. volunteer. This Vittal Kundur, according to them, died of cancer shortly after the elections.

It is necessary in this connection to refer to the evidence of the petitioner himself as P. W. 1, because he speaks to having seen the first respondent both at Uchila as well as Padubidri. According to the evidence already summarised by us, he must have been at Uchila earlier at about 1 or 1-30 P. M. and came over to Padubidri at about 2 or 2-30 in the afternoon P. W. 1 states :—

> "R-1 was going about in Taxi No. MYV 1634 He had taken voters in that Taxi which I saw. I had seen it at Uchila and Padubidri. I saw him at Uchila at 1 P.M. and at Padubidri at 3 P.M.
>
> * * * *
>
> I was in Padubidri before the taxi came there, about half an hour earlier. I was there for about half an hour after R-1 left Padubidri. R-1 remained there for about 25 minutes."

P.W. 2 Valarine D'Sa, the taxi driver also has given the details of the perambulations of the first respondent. According to this witness, he came to Katpadi from Kaup at about 7 A. M. that morning and the first respondent got into the taxi at that place ; from there they went over to various places like Manchakal, Shirva, Palimar, etc.; they were at Uchila at about 1-15 P. M. and remained there for about an

hour and from there, they went to Padubidri reaching that place at 2.30 P.M. and had their food there.

Now, the importance of this part of the evidence lies in the fact that a number of witnesses speak to have actually seen the first respondent travelling in this car at two places, Uchila and Padubidri. The evidence also makes it clear that the first respondent went first to Uchila and was there for about an hour between 1 P.M. and 2 P.M. and then went over to Padubidri where he spent nearly 1½ hours or more between 2-15 or 2-30 to 4 O' clock in the afternoon.

The petitioner also, according to his evidence, was at Uchila when the first respondent was there and at Padubidri when the first respondent was there. Though both P. Ws.38 and 47 speak to having seen the petitioner at Uchila, the only witness who speaks to the presence of the petitioner at Padubidri is P. W. 49 Anantha Shenoy.

The first respondent, on the other hand, has totally denied his presence at Uchila and Padubidri at the times specified by these witnesses. According to him, he was at Padubidri first, late in the afternon at or about 4-15 and then proceeded to Uchila, which place he reached at about 10 minutes before 5 P.M. and left very shortly thereafter. His further case is that he was travelling in a private car bearing No. MYW 1476 belonging to a friend of his called Viswanatha Hegde and driven by the latter's driver, P. W. 30. The driver corroborates the evidence of the first respondent. It is unnecessary to refer to the details of the journeys of the first respondent to places other than Padubidri and Uchila for our present purpose, except in connection with the argument about the approximate timings to which we shall refer at a later stage.

There is then the evidence of three other witnesses examined by the first respondent which has relevance to this point, namely, R.W.7 Hariram Laxman Kamath, R.W.24 M. R. Prabhu and R.W. 25 Somasundara Salian. The first two had seen the first respondent at Padubidri on the polling day travelling in the car belonging to Viswanatha Hegde mentioned above. The former gives

further detail that he saw the first respondent at 4.15 P.M. or 4.30 P.M. coming from Palimar side. He has twice repeated this in the course of his cross-examination, the relevant portion of which is the following :—

> "R—1 went to Hindustani School coming from Karkal side. I saw only the driver and R—1 in the car. It was then about 4.15 or 4.30 P.M. My house is in Karkal road. My houses 1½ furlongs the polling booth. I left my shop at 4 p.m. to take the ladies to vote. When I took the chit and was going to the booth I saw R—1 going in the car. It was 4.15 or 4.30 P.M. then."

R.W. 25 Somasundara Salian has seen the first respondent at Uchila. He was the polling agent of the first respondent himself at that place. According to him the first respondent came there at about 5 or 10 minutes before 5 P M. and remained till the voting closed. In cross-examination, he repeated—

> "I remember R—1 came 5 or 10 minutes before the vote closed. R—1 was not present at the time the ballot boxes were sealed. He left at about 5.5 P.M."

Now the question is to choose between the versions of the petitioner and his witnesses on the one hand and that of the first respondent and his witnesses on the other. If, as stated by the first respondent, he was in Padubidri after 4 P. M. and in Uchila at about 5 O' clock in the evening the evidence of the petitioner and his witnesses tending to show that he was at these places earlier in the afternoon becomes unacceptable.

In making the choice between these two versions, little or no assistance can be derived from the alleged interestedness or sympathies of the respective groups of witnesses. If the first respondent can argue that the petitioner's witnesses are all Congressmen, Roman Catholics or persons belonging to such or similar groups greatly interested in the Congress and the Congress candidate, the petitioner can as well say

that his sole witness speaking to his presence at Uchila at 5 O' clock is his own polling agent. The decision must therefore rest largely upon the probabilities and the intrinsic credibility or incredibility, if any, of the principal witnesses in the case.

The one witness among those examined by the petitioner, who can claim to speak with personal knowledge about the movements of the first resp ndent throughout the day is the driver of the vehic'e MYV 1634, Valarine D'Sa, P.W. 2. If his evidence is to be believed, the first respondent was throughout in his taxi right up to 8 P. M. that day. We should also believe that the first respondent spent more than one hour at each of these places, Uchila and Padubidri. The halt at Padubidri was longer in duration than the halt at Uchila. The Majority of the witnesses, as we have stated, estimate the length of the first respondent's stay at Padubidri at 1½ hours. But the petitioner, who, according to his evidence arrived before the first respondent and stayed for half an hour after the first respondent's departure, is clear in his statement that the first respondent spent just about 25 minutes According to P.W. 40 it was just about quarter to half an hour. If that was all the time that the first respondent stayed at Padubidri, then taking into account the time which according to P. W. 2 was utilised for taking food there, it is impossible to believe that he could have made four trips, each trip, according to the witnesses, taking about 10 minutes.

There is then the other feature of the evidence which is not without its own significance. P. W. 2 and almost every other witness who saw the voters being transported, speak to the fact that the voters were all Muslims. But the petitioner has examined two Hindus and elicited from them the information that their aged relatives were transported to the polling station. Most of the witnesses other than P.W. 2 state that on each trip the taxi carried 5 or more voters whereas P.W. 2 states that he never exceeded the prescribed limit of 4 passengers besides himself.

None of the witnesses other than the voters who saw them travel in the taxi is able to give the names of the

voters who travelled in the taxi. P.W. 1 himself, even at the time when he came to depose as a witness in the Court, does not mention the names of any of the voters conveyed by the taxi. It should be remembered that he is addmittedly a man belonging to Uchila and one who took considerable interest in the election itself on b half of the Congress. Further, one of the witnesses at Uchila namely, Chandrasekhara Hegde actually states that he brought this unauthorised practice to the notice of the petitioner and wanted him to take action in that behalf. If so, it is surprising why even at the time he was in the witness box, the petitioner could not relate or mention the name of a single voter whom he saw travelling in the taxi.

In such a state of affairs, one might ask how the petitioner came to know that Usman Saheb, Sabu Sab and others who say they are voters and travelled in the taxi, were the persons who actually did so and could therefore give evidence. No information has been placed before the Court as to how and on what basis or on whose information the petitioner came to know that these were the voters who travelled by the taxi and could be expected to give evidence.

There is another circumstance which is also not without its own significance. The petitioner started giving evidence on the 10th of October 1962. His examination was continued on the 11th and 12th of October and concluded on the 18th October. Earlier, very early in the progress of the election petition, the Tribunal had given time to both sides to produce lists of witnesses. None of the witnesses examined in relation to Padubidri and Uchila had been made in any of the lists filed by the petitioner before he started giving evidence. In the list filed on 16th October 1962, only the name of Valarino D'Sa, P.W. 2, was given. The names of the rest of the witnesses were given thereafter. On the 18th of October 1962, he stated that he had no further lists to be filed but he has also stated that he had 58 witnesses. The statement of the 18th may or may not be accurate. What is undoubted is that until he actually started giving evidence he had not made up his mind as regards the witnesses to be examined with reference to his

specific allegations relating to MYV 1634. We have already made our comments on the evidence of R. W. 3 Vasudeva at the instance of the 3rd respondent.

It is no doubt true that there is no statutory obligation regarding the production of witness lists at a particular point of time on pain of being refused permission to examine the witnesses not mentioned in the lists. But the delay of the type mentioned above does cast suspicion on the credibility of the witnesses so brought in at a late stage.

In the light of the various infirmities mentioned above, we do not think that the Tribunal could be said to have erred in declining to place reliance on the evidence adduced by the petitioner. Though the Tribunal formulated propositions or used language making it possible to say that it proceeded more on the alleged interestedness than on a consideration of probabilities, the ultimate opinion of the Tribunal not to believe this evidence or to act upon this evidence does not appear to us to be wrong because, an independent examination of the evidence in the light of the probabilities and in the light of the arguments strongly pressed before us, does not lead us to any different conclusion.

We hold, therefore, that there is no ground whatever to take a different view than the one taken by the Tribunal on the question of the alleged corrupt practice of hiring motor vehicles.

The second and the only other point for consideration is whether the evidence adduced by the petitioner is sufficient to uphold his contention that the first respondent has been guilty of corrupt practice of bribery having made a promise of donating his four months' salary as Legislator to the Mulkady Durga Parameswari temple.

The evidence on this matter is not much. P. W. 18 Ramanna Shetty is the manager of the temple. P. W. 19 Shankara Hegde is one of its votaries. P W. 20 Loku Madivala is said to be one of the persons present at the temple on the day in question.

P. W. 20 does not speak on his own knowledge but on what he learned from P W. 18 and others though he was somewhere in the precincts of the temple.

According to the evidence of Ramanna Shetty, P. W. 18, there had been for some time before, a talk or proposal among the votaries of the temple that they should demand a donation of Rs. 2,000 from the Congress candidate for or in return for their support at the election but that both the Congress candidate and his workers declined to accept that suggestion, and later, on the 14th of February 1962, the first respondent came to the temple and after hearing the proposal by the votaries and the rejection thereof by the Congress candidate, himself, that is, the first respondent, made a voluntary offer openly to all the persons present there that he would donate his four months' salary as legislator, if elected with the support of the votaries of the temple. The 19th witness Shankara Hegde has spoken more or less on the same lines although the exact nature of the proposal by the body of votaries is stated by him with slight variations. At one stage he states—

> "It was decided that any party whether Congress, Socialist or Communist, if Rs. 2,000 were paid by that party, it should receive all our support.'

At another place he says—

> "We wanted Rs. 2,000 from Congress or anything that the other party might give."

It appears, according to the evidence of Ramanna Setty that both P. W. 24 Kuppannachar and P. W. 37 L. Mendonsa had come to the temple early that morning, and either on their own or upon instructions of the 3rd respondent, had declined to give Rs 2,000 to the temple. But this fact is put to or elicited only from P. W. 24 Kuppannachar. There is no reference whatever in the evidence of Mendonsa, P. W 37, to any matter relating to this temple or the anxiety of its votaries to make some money out of this election.

Seetharama Shetty, R. W. 19 is said to be one of the persons present at the time the first respondent made the offer or promise mentioned above. In his evidence, he has denied his presence on the occassion.

The first respondent, of course, as R. W. 1 ohas totally denied the case of the petitioner in his evidence.

If it is a question of choosing between the evidence of the respondent and that of the petitioner's witnesses, we think there could be litte doubt that the choice should be in favour of accepting the respondent's evidence, because it is inherently improbable that a person standing for election and knowing that making a promise of this nature may furnish the basis on which his election could be invalidated, would have gone so far as to make an open declaration of the type spoken to by the petitioner's witnesses. Secondly the votaries of the temple, according to the evidence, made no attempt to approach the first respondent, after his success in the election, to make good his promise. If indeed he had made that promise and if we are to believe that the votaries of the temple were sincere in collecting donations for the temple—whatever may be the complexion of their act in the light of the election law—one would expect them to proceed further with their intention of collecting the money so generally promised by the first respondent. They have not done so. This is a circumstance which casts considerable doubt on the evidence adduced by the petitioner.

The learned counsel for the appellant has however relied upon an entry in exhibit B-13 to probabilies the case of the petitioner.

The respondent, it may be stated, has totally denied having gone to the Mulkady temple on 14th of February 1962. His answers or the manner in which the answers have been recorded may be read as amounting to a denial of his having gone to the locality itself on that day. It was contended on behalf of the appellant that an entry in the return of election expenses filed by the first respondent clearly showed that he had gone to Mulkady on the said, date *i.e.*, 14th February 1962. We agree that the entry proves

or must be taken to prove that the first respondent had gone to Mulkady on that day. But the probability suggested by the relevant entry in the return of election expenses is not merely that the first respondent had gone there, but also his other helpers or workers like Deju Shetty and Ranga Pujary. None of the Petitioner's witnesses speaks to their presence on the occasion. One of them, namely, Ranga Pujary has been examined as R. W. 12 to whose evidence we have already made a reference. No attempt has been made to elicit from him whether or not he was present at the Durga Parameshari Temple on the 14th of February 1962 or even to suggest to him that the first respondent had made a promise of the type mentioned above in his presence.

Having regard to the extreme weaknesses of the evidence and the position that human probabilities are all against accepting the case sought to be made out by the petitioner, we are unable to agree that the Tribunal committed any error in disbelieving the evidence adduced and holding that the petitioner had not proved his case.

As already stated, all other findings of fact recorded by the Tribunal have not been challenged in this appeal and the second prayer for declaring the third respondent duly elected has also not been pressed before us.

In the result, the appeal is dismissed. The appellant will pay the first respondent his costs in this appeal Advocate's fee Rs. 500.

(Sd.) A. NARAYANA PAI,
Judge.

(Sd) M. SANTHOSH,
Judge.

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